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VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS.

In our May Number we brought our brief review of the 1916 acts of general interest of the profession, to page 384. We now conclude.

Virginia Legislature 1916—Concluded.

On page 385 is an act which we very much regret to see. Its effect is to repeal the pension for Supreme Court judges, although the law is continued for such judges who retired up to 1919. The former law was a wise, just and proper law and we regret to see that the Legislature has seen fit to abolish it.

Page 391 amends § 4051 of the Code of 1887, as amended by the act of March 17th, 1910, allowing bail to a person convicted where an appeal has been taken and sentence or execution suspended.

Page 393 validates certificates of acknowledgement of deeds which have been recorded, taken by commissioners of deeds appointed by governors of other states than Virginia.

Page 394 provides for the indexing of deeds and other records in ledgerized general index books.

Page 396 creates the office of Public Defender, who is appointed by the court to serve for two years and who shall serve without compensation, in all cities having a population of fifty thousand or more. The city council, however, may compensate him if it sees fit. This act we think will hardly amount to much in view of the act on page 640, allowing the court to order the payment of a fee of \$25.00 to any person appointed to defend a poor person accused of a capital offense, or one punishable by confinement in the penitentiary for a period of 10 years or more.

On page 411 a commission is appointed on economic efficiency, to make a survey of the State and local governments of the Commonwealth of Virginia and report to the next General

Assembly. This commission is to take a lesson in economy by doing what will prove an enormous amount of work without compensation.

Page 413 is of no general interest, but is somewhat amusing from the fact that it prohibits any "hog, or hogs, or *swine*" from running at large upon the streets in Grundy. "Insatiate archer would not one suffice?" Therefore why not "*swine*" alone?

On page 442 is an act to punish tubercular patients for expectorating in public places and vehicles, or who shall deliberately place the health of any other person in danger of infection with such diseases; an act which is liable either to cause a good deal of trouble or to be deliberately ignored.

On page 458 is an act authorizing the board of supervisors of any county to appropriate for the public schools out of the general funds a sum not exceeding twenty-five per centum of the amount collected for county purposes during the next preceding year.

Page 461 amends the act of March 13th, 1912, providing for the issuance of county bonds for permanent road or bridge building.

Page 467 makes it a penalty for the purchaser of delinquent lands to demand of any one desiring to redeem them a greater amount of costs than is allowed by law.

Page 479 amends the act regulating professional nursing.

Page 489, an act concerning enforcement of laws governing the manufacture, storage, etc., of articles used as food or condiment of human beings or animals.

Page 490 amends § 3702 of the Code of Virginia regarding setting fire to woods, etc.

Page 490, an act repealing § 2467 of the Virginia Code. That Section gave ten days after acknowledgement for the recordation of deeds, etc., and provided that if recorded within that time they should be valid as to creditors and purchasers, as if they had been admitted to record on the day of the acknowledgement. The attention of the profession is called to this, as it makes a very important change in the law. The ten days provision is stricken out.

Page 496 makes it unlawful to have roller towels in hotels, trains, stations, public or private schools, etc.

On page 498 is an act making the failure to pay for or refusal to return goods, etc., delivered for selection or approval larceny in certain cases.

Page 498 gives authority to cities having a population of fifteen thousand, or over, to appoint two police-women.

Page 499, an act allows to persons sentenced to a term in jail, credit for all time spent by such person in jail awaiting trial, or pending an appeal, or awaiting removal to the penitentiary—a very unfortunate act. No credit ought to be given a prisoner for the time in jail pending his appeal. It ought to be entitled “An act to encourage the taking of appeals in criminal cases,” as most criminals would prefer to remain in jail rather than be in the penitentiary.

Page 503 amends § 3508 as to officers fees and repeals § 3509.

Page 506, an act requiring contributory negligence to be set forth in the bill of particulars when relied upon as a defense.

Page 507, an act amending the act of March 13th, 1912, requiring the recordation of the names of a person dying intestate, so as to make the act apply to the case of all persons dying leaving an estate, whether there be a will or not.

On page 508, subsection 8 of § 5 of the Code is amended in regard to the computation of time. This amendment we suppose is done to change the law as laid down in *Anderson v. Union Bank*, see 117 Va. p. 1.

Page 508 amends § 2911 of the Code in relation to judgment in detinue.

Page 509 amends the act approved Feb. 2, 1892, in regard to the title of bona fide purchasers of real estate from the heir at law of decedent against the devisees of said real estate, without notice to such purchaser.

On page 510 § 2674 of the Code is amended in relation to the return of accounts of sales by fiduciary.

Page 512 provides when a person convicted of a misdemeanor may be sentenced to the State convict road force.

Page 513 amends an act of May 23rd, 1887, which has been twice amended since its enactment in regard to the fraudulent disposal of personal property by any person who had agreed in writing that the title or ownership should remain in another.

Same page, allowing adult females to qualify as deputy clerks of any of the courts.

On page 608 a little hysterical legislation to prevent and punish the desecration of the flag of the United States.

On page 627, an act making it a misdemeanor to cast glass, bottles, tacks, iron, etc., in any public road, and allowing what we supposed was always allowed under the Common Law, an action of damages against the person violating the act, in favor of any person injured by such casting.

Page 640, act to prohibit any chauffeur, motorman, engineer, or other person to drive or run any automobile, car, truck, engine or train while under the influence of intoxicants.

On page 648, an excellent act prohibiting the setting of traps upon lands or in the waters of other persons for the purpose of killing or taking any fur-bearing, hair-bearing animal, or fish without the consent of the owner of the lands. The board of supervisors, however, are required to adopt this act before it becomes operative in any county in the state.

On page 655 is an act amending § 89 of the revenue act which should be carefully considered.

On page 622 is an important act defining feeble-mindedness and providing for the examination, legal commitment, custody and care of feeble-minded persons and their segregation in institutions.

On page 698, an act authorizing counties and cities to establish sanatoria for the care of persons suffering from tuberculosis.

Page 703 amends § 2498 of the Code as amended by the act of March 16, 1901 in regard to releases on margin of record books by clerks of court, which should be carefully considered.

Page 705 amends § 3630 of the Code relative to interrogatories.

On page 707 is an act amending § 2466 of the Virginia Code in relation to the recordation of certain writings, the amendment being that a release deed in whole or in part will be sufficient, if recorded either in the county or corporation in which the property released is located, or in the county or corporation in which the property was released was situated at the time of the recorda-

tion of the deed of trust, and validates any such release heretofore made.

Page 708 is an exceedingly important act—too long to allow an extended notice, but abolishes bills of exceptions and prescribes certain forms to be used where bills of exception were formerly taken. This act invites the careful scrutiny of the profession and should be read in connection with the act on page 722 which provides *for* bills of exceptions. Both acts are approved on the same day and seem to us absolutely contradictory. We shall treat of these two acts in our next month's editorials.

On page 713 is an act to prevent the fraudulent sale in bulk of merchandise, etc.

On page 716 an act amending § 2907 of the Code in relation to the seizure in detinue of property sued for.

Page 717, an act amending § 3584 of the Code in relation to the execution of writ of possession and unlawful detainer, damages and costs.

Page 721, persons sentenced to imprisonment in the state penitentiary are allowed another deduction from their sentence if they are held by quarantine regulations.

Page 723 provides that the father and mother of a legitimate unmarried minor child are equally entitled to the custody, services and earnings of such child. If either be dead, or unable or refuses to take its custody, the other is entitled to the custody, services and earning of such child. It is provided, however, that the court in all controversies between parents as to such custody, shall be guided by the consideration of the welfare of the children.

Page 723 empowers attorneys for the Commonwealth to supply lost, destroyed, or stolen indictments.

Page 724, an act limiting the recovery of any ground rent to ten years from the time such ground rent becomes due and payable.

The act of March 27th, 1900, approved March 14th, 1908, is again amended in regard to the manufacture or sale of adulterated food or liquors.

Page 729 provides additional remedies for the collection of taxes, State, county and municipal.

Page 731 amends § 2197, which has already been amended four times, in regard to the burial of dead hogs, dying by contagious diseases, and requiring the cremation or burial of all animals or fowls that die from contagious or infectious diseases.

Page 731 consolidates all the acts relating to Confederate pensions.

Page 751 makes ice cream a *necessity* and provides that it may be delivered on the Sabbath day if it be manufactured on some other day. We must heartily concur—ice cream *is* a necessity to us.

Page 753 regulates the use of utensils for tested milk, cream, etc.

Page 757 defines intrastate messages and what is held not to be such a message.

Page 758—An Act amending the Act of March 15th, 1906 as amended January 18th, 1904 in regard to eminent domain. It vacates any appointment of Commissioners when their report is not filed for one year after their appointment and provides that if the amount allowed by the Commissioners is not paid in 3 months from the filing of their report the proceedings shall on motion of any party condemning or of any defendant be dismissed.

Page 758—Gives Justices of the Peace jurisdiction as they now have it, but raises the amount to *three hundred* dollars, with the usual right of appeal—removal, etc. If our Justices of the Peace were such as they used to be prior to 1860, this might be a nice law. But with the present method of selecting Justices and the usual line of Justices selected we gravely doubt the wisdom of this increase in jurisdictional amount.

Page 760—As to what extent the Statute of Limitations shall be suspended by proceedings in creditor's suits as to claims provable therein.

Page 760—Amending the Act providing for recovery by motion, etc., on contracts, damages, etc., etc. This amendment brings this proceeding in line with actions of assumpsit, by allowing judgment to go upon a sworn account, upon the day of the motion, unless a plea duly sworn to is filed by the defendant. Also allows the recovery of damages and a penalty in a single motion.

Page 762—As to Liability of Common Carriers *whose motive power is steam* engaged in intrastate commerce for injuries to employees and providing for the pleading therein. Abolishes "the assumption of risk" where any statute is violated. Allows declarations to have Counts setting out a cause of action growing out of the Act of Congress and without requiring plaintiff to elect under which statute he claims. Why electric railways are exempted is beyond our ken. In this day when their use is beginning to be so extensive, why exempt them? We can see no good reason for it.

Page 764—Aimed at Gambling Houses and at all persons interested in any game played for money, etc. Compelling suspected persons to testify, but making them immune from prosecution.

Page 764—Strikes out "Keepers of ordinaries" and "owners and occupiers of gristmills" from those debarred from service on Grand Juries.

Page 765—Amends § 3591 of Code "as heretofore amended" in regard to return of officer on fieri facias.

Page 766—Permitting judgment to be taken against one or more members of special partners and unincorporated companies.

Page 767—Making the Act of March 16th, 1902 apply to Commissioners in Chancery who took acknowledgments to deeds in which they were Trustees.

Page 767—Supplemental to the Prohibition Act. In our judgment absolutely unnecessary, as the Courts have always had the power to remove the officers mentioned for the offences charged.

Page 769—Allowing Boards of Supervisors to make certain appropriations to public schools.

Page 776—Making "joy riding" a misdemeanor.

Page 780—Making Houses of Prostitution, etc., nuisances and providing for injunctions against owners and occupiers.

Page 793—An important act as to return of income taxes, etc., as to licenses, etc., etc.

Page 805—An Act as to the collection of fines, etc. Attorneys for the Commonwealth should note.

Page 809—Raising the age of consent to fifteen years.

Page 812—An important change in collateral inheritance taxes

and making *all* inheritances liable to such tax whether collateral or not at the rate of 5 per cent on the \$100. In case the estate passes to grandfather, grandmother, father, mother, husband, wife, brother, sister or lineal descendant then the tax is 1 per cent on all in excess of \$15,000. These are *primary* rates. The rates then become progressive. In other words this is a graduated collateral inheritance tax and probably the most drastic piece of legislation enacted. It is strange this Act attracted so little attention.

Page 834—Changing the law as to one judge sitting for another in case of sickness, disability, etc.

Page 835—Prohibiting the division of fees between physicians and surgeons. Why? Is there any reason why *lawyers* should not also be barred from dividing fees?

Pages 845 and 847 and 848—*Three* acts on the same subject as to decreasing the outstanding stock of corporations. Which one is the law?

Page 850—As to the reorganization of corporations by purchasers.

Page 939—An act amending § 3112 of the Code of Virginia making it mandatory upon the Court of Appeals to prescribe formal rules and regulations for practice and to prepare a system of pleading and form of process and put the same in effect, a very important act but putting a burden upon the Court of Appeals which we do not think exactly fair to that tribunal.

Page 524—An act preventing an undue publicity of income tax returns.

We do not claim that the foregoing resume and those which preceded it give *every* act of a general nature. Some are of no immediate importance: We give only those to which we think the attention of the Profession should be immediately called.

We have given in this number an unusual amount of space to the Acts of Assembly of 1916. We do this because we believe our resumé of the legislation enacted, will prove of more practical value at this time, than anything else we could do. The work of examination has been labori-

Our Last General Assembly.

ous: Far more so than the result would seem to indicate. It only claims to be a reference which may serve as a guide to fuller investigation. A very large amount of legislation has been enacted. Some absolutely useless. Some of decided value. Much which could have been improved upon. It is again painfully apparent that some of the enactments have been made to cure an evil in some particular case. To alter a general law, long upon the Statute books because its application has proven onerous or hurtful in one particular case, is to subject the general good to danger in order to cure a single evil.

The enactment and re-enactment of enactments—the amendments of acts time and again amended and re-amended produces confusion, uncertainty and much harm. We wish that every General Assembly would as its first Act at each session do what one or more Assemblies have done in the past—i. e., have every change amendment or addition to each existing Statute printed in italics and have this done also in the printed Acts. This would save time—make the reason of the amendment plain to the eye and brain alike—and we trust our law-makers will keep this in mind. Another thing strikes me as an evil which should be cured. And that is the large number of private Acts and Acts relating to City Government. The latter it was supposed would have been rendered unnecessary by the Clause in the Constitution providing for a general law to cover this subject. And yet we find charter after charter of cities re-enacted, amended, etc. Many of the private acts could easily be made subjects to be considered by the Courts—a general law to that effect being passed. The various Acts relating to Counties should by a general Act be left to the Boards of Supervisors.

The present volume of the Acts is over nine hundred pages. It should not have been over one hundred and fifty or two hundred at the outside.

Judge James H. Keith, President of the Supreme Court of Appeals, has resigned, his resignation to take effect on June 10th, 1916. The Governor has appointed Judge F. W. Simms to succeed him.

**The Resignation
of Judge Keith.**

Whilst it was known that Judge Keith would retire at the end of his term, Dec.

31st of the present year, Judge Simms having been elected to succeed him in consequence of his determination not to be a candidate, this resignation comes somewhat as a surprise. But Judge Keith has well earned his repose and retires from the Bench with the consciousness of work well done and carrying with him into private life the respect and admiration of the Bar. We can add nothing to the tribute we paid him in the December 1915 number of the REGISTER. Our regret is that he felt compelled to give up his work six months sooner than we anticipated. Judge Simms, who succeeds him, is an able lawyer whose decisions will be looked forward to with high anticipation. He is in no way unworthy of the great tribunal of which he now becomes an active member and will in our opinion prove a most valuable addition to our hard working and hard worked Court.

The invaluable work which this Board is doing in a quiet and unostentatious way, ought to be more widely known: and lawyers who have youthful delinquents
State Board of Char- to defend and attorneys for the Com-
ities and Corrections. monwealth who have youthful crim-
 inals to prosecute ought to keep in close touch with its Secretary, Rev. J. T. Mastin, Richmond, Va.

There is an important amendment to the law which ought to be made to enable attorneys for the Commonwealth to ascertain the age of persons accused of crime and sent on the grand juries. That is, that every magistrate committing a person accused of crime, should be required to endorse on the warrant and mitimus the fact whether or not the accused is under the age of eighteen years. We are cognizant of a case of great hardship, which might have been averted had this been the law. A female child about thirteen or fourteen years of age was arrested for house-breaking and grand larceny, and in the month of December sent on to the grand jury which in the county of the crime was not to be impannelled until June. This poor little wretch might have remained in jail from December until June had she not been seen by accident, her case inquired into and she at once committed to the care of the Society. She confessed the larceny

and there was really no reason for the charge of house-breaking, she being an inmate of the house in which the larceny was committed and allowed free access to every room in it. The warrant on which she was committed did not indicate the sex of the accused, nor age, but charged house-breaking and larceny of various articles, including some valuable jewelry.

It is true the Act of March 27th, 1914, (Acts 1914, p. 696) provides that "No court or justice, unless the offense is aggravated or the ends of justice demand otherwise, shall sentence or commit a child under eighteen years of age, charged with or proven to have been guilty of any crime to a jail, etc., etc.," but the average justice in the country always construes "the ends of justice" to demand the committal. It saves him a deal of trouble.

The amendment suggested would prevent cases like the one mentioned and would be still further improved if it were provided that the jailer should be required immediately upon the commitment to report to the attorney for the Commonwealth the fact that a person had been committed to jail under eighteen years of age.

Through the courtesy of the Michie Company Vol. 117 of our Virginia Reports has been laid upon our table. One hundred and thirteen cases are reported—one hundred and
117 Virginia. eight civil and five criminal. Fifty three are affirmed—Fifty three reversed. Of the civil cases, one is by a divided Court and one writ is dismissed.

There are five criminal cases reported, two affirmed, three reversed.

We are struck with the fact that no dissenting opinion is filed, though there are several dissents.

The opinions are in most instances brief and to the point. The Court very wisely doesn't attempt—as so many Appellate Courts do—to write law treatises or "show off." When the Judge delivering the opinion can be brief he is brief and it is a pleasure to read opinions which state the law and the facts clearly and concisely and are not overladen with citations and quotations padding the decision in an absolutely unnecessary way.